

**SAMUEL A. HERRICK - January 13, 2010**

1

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION

SNAP-ON BUSINESS )  
SOLUTIONS, INC. )  
Plaintiff, )  
vs. ) CASE NO. 5:09-cv-01547-JG  
O'NEIL & ASSOCIATES, INC. )  
Defendant. )

ORAL VIDEOTAPED DEPOSITION

SAMUEL A. HERRICK

January 13, 2010

ORAL VIDEOTAPED DEPOSITION OF SAMUEL A. HERRICK,  
produced as a witness at the instance of the  
Plaintiff and duly sworn, was taken in the  
above-styled and numbered cause on the 13th day of  
January, 2010, from 10:12 a.m. to 4:24 p.m., before  
Michelle Hartman, Certified Shorthand Reporter in and  
for the State of Texas and Registered Professional  
Reporter, reported by computerized stenotype machine  
at the offices of Liskow & Lewis, 1001 Fannin Street,  
Suite 1800, Houston, Texas 77002, pursuant to the  
Federal Rules of Civil Procedure and the provisions  
stated on the record or attached hereto.

**SAMUEL A. HERRICK - January 13, 2010**

40

1 does that mean, complete, if you know?

2 MR. PARKER: Objection.

3 THE WITNESS: It means that Snap --  
4 that O'Neil believes that they had gathered MCFA's  
5 data on www.catliftmanuals.com.

6 Q (BY MR. GUAM) And why do you -- why did  
7 you refer to it as MCFA data?

8 A Because it's our data --

9 Q Why?

10 A -- that they -- every publication that's  
11 printed says, "Copyright MCFA," and it's copyrighted  
12 because MCFA owns all rights to the information about  
13 our lift trucks we produce.

14 Q Did MCFA attempt to get its data back from  
15 Snap-On?

16 MR. SPECTER: Objection. Calls for  
17 speculation.

18 THE WITNESS: Can you rephrase the  
19 question?

20 Q (BY MR. GUAM) Well, what is it that you  
21 don't understand?

22 A What you mean by "attempt."

23 Q Did MCFA ever ask Snap-On if it could have  
24 its data back?

**SAMUEL A. HERRICK - January 13, 2010**

41

1 A Yes.

2 Q And who did that? Who at MCFA did that?

3 A Multiple individuals.

4 Q List them, please.

5 A Jay Gusler, Matt Wilczek, Elena Hoppel,  
6 Samuel Herrick.

7 Q All right. So you asked someone at Snap-On  
8 for the data back, correct?

9 A Yes.

10 Q More than once?

11 A Yes.

12 Q Okay. Let's go -- how many times?

13 A More than five, less than ten.

14 Q Did you ever do it in writing?

15 A I can't be -- I can't remember. I believe  
16 the answer is yes, but I -- I'm not positive.

17 Q Okay. Who at Snap-On did you ask to have  
18 the data back from?

19 A Terri Keeler.

20 Q I'm sorry, Terri Keeler?

21 A Terri Keeler, T-E-R-R-I.

22 Q Okay. Anyone else?

23 A Scott McCuin (sic).

24 Q Okay. Anyone else?

**SAMUEL A. HERRICK - January 13, 2010**

42

1 A Sam Vongratana.

2 Q I'm sorry, the last name again?

3 MR. SPECTER: Could you spell it?

4 THE WITNESS: V-O-N-G-R-A-T-A-N-A.

5 Q (BY MR. GUAM) Anybody else?

6 A Jonathan Harvey.

7 Q Anyone else?

8 A Cory Roberts.

9 Q Okay. Anybody else?

10 A I believe that's the list.

11 Q Do you recall who the first person you  
12 asked for the data back from?

13 A Terri Keeler.

14 Q Do you recall when approximately you asked  
15 him that --

16 A Her.

17 Q -- her that? Sorry.

18 A I was hired in January 2007, Q1 of 2007.

19 Q Did you do that in person, by phone, in  
20 writing?

21 A Yes.

22 Q All of those? I'm sorry, how did you  
23 ask -- how did you first -- the first time you asked  
24 Terri Keeler for the data back, was that in person?

**SAMUEL A. HERRICK - January 13, 2010**

43

1           A       No, on the phone.

2           Q       On the phone. Okay. And what specifically  
3 did you say to her?

4           A       I couldn't tell you specifically. I can  
5 give you my recollection.

6           Q       Give me the best you can.

7           A       We -- our first request was to have an  
8 electronic copy that they keyed for us to connect to  
9 our warranty system.

10          Q       And what was the purpose of that? I don't  
11 understand keying to the warranty. Can you explain  
12 that a little bit more?

13          A       I'm sorry, keying -- which part do you want  
14 me to -- is it the keying you want me to describe?

15          Q       Sure.

16          A       Snap-On's -- one of Snap-On's services for  
17 MCFA is to take our data and to physically key each  
18 character in its exact format.

19          Q       I don't understand keying. Is that just  
20 typing it in or what is keying?

21          A       Yes.

22          Q       It's just typing it in?

23          A       Yes.

24          Q       Well, you said "key to connect to a

**SAMUEL A. HERRICK - January 13, 2010**

48

1           Q       And when you met with him, did you discuss  
2       getting data back from Snap-On?

3           A       Yes.

4           Q       And what did you say to him and what were  
5       his responses? And I'm looking for more detail of  
6       the discussion.

7           A       It was a very high-level  
8       direction-of-the-business, from Snap-On's  
9       perspective, meeting, and we asked him for our data,  
10      and in that meeting I believe we also requested some  
11      enhancements to their product catalog and asked them  
12      if they were on the future direction of the company.

13          Q       Asked if they were on the future direction  
14      of the company?

15          A       The -- sorry, the product development  
16      schedule.

17          Q       Do you recall when this discussion took  
18      place? I'm not looking for an exact day unless you  
19      know it, but --

20          A       Probably end -- later 2007, beginning of  
21      2008.

22          Q       At the time that that discussion took place  
23      with -- was it Mr. McCuin --

24          A       Yes.

**SAMUEL A. HERRICK - January 13, 2010**

51

1 Q Well, what happened next after you guys  
2 worked out a set of requirements for the data?

3 A Sam Vongratana was no longer with Snap-On  
4 and we were moved to another person.

5 Q Who was that?

6 A Jonathan Harvey.

7 Q Okay. What happened next?

8 A We met at Snap-On with Jonathan Harvey,  
9 Cory Roberts, Jewel Drass, Dan Gesacion. Those were  
10 the primary contacts.

11 Q And you said "we met." Who is "we,"  
12 yourself and who?

13 A Paul Fiala.

14 Q Who is Paul Fiala?

15 A Paul Fiala at that time was the service  
16 parts manager at MCFA.

17 Q Do you recall when this meeting took place?

18 A Probably mid-2008.

19 Q Can you tell me what happened at the  
20 meeting?

21 A We expressed our disappointments with  
22 Snap-On and requested our data and we talked about  
23 the roadmaps of the products.

24 Q Anything else from this high level that

**SAMUEL A. HERRICK - January 13, 2010**

53

1 online and the -- the Net Compass and Parts Manager  
2 Pro products, and faster publishing turnaround.  
3 Those are the -- those were the primary requests.

4 Q And you also said you requested the MCF  
5 data -- MCFA data back. What response, if any, did  
6 you get from anyone in the meeting?

7 A Jonathan Harvey asked if we were asking for  
8 the data because we wanted to leave Snap-On.

9 Q Did you -- did you respond to his question?

10 A Yes.

11 Q And what did you say?

12 A No.

13 Q At the time of this meeting -- and I may  
14 have asked this already, but at the time of this  
15 meeting, had MCFA been discussing with O'Neil  
16 replacing Snap-On?

17 A No.

18 Q Was MCFA considering replacing Snap-On with  
19 O'Neil at the time of this meeting?

20 MR. SPECTER: Objection. Calls for  
21 speculation.

22 THE WITNESS: No.

23 Q (BY MR. GUAM) Do you know if MCFA had been  
24 talking to anyone else about replacing Snap-On at the



**SAMUEL A. HERRICK - January 13, 2010**

54

1 time of this meeting?

2 A Yes.

3 Q Who had they been talking to?

4 A Yes, I know.

5 Q What do you know? Maybe we're having a  
6 failure to communicate.

7 MR. SPECTER: I think your question  
8 was whether he knew if MCFA was talking to someone  
9 about replacing Snap-On.

10 MR. GUAM: Okay.

11 MR. SPECTER: His answer is, yes, he  
12 knows whether MCFA was, in fact, doing so.

13 Q (BY MR. GUAM) Is that what you're saying?

14 A Yes.

15 Q Were they?

16 A No.

17 Q Okay. And I think you said this meeting  
18 was in mid-2008. Do you have a -- is there a --  
19 thinking about it now, can you put a more specific  
20 time period on it, a date on it?

21 A (Shakes head.)

22 Q No?

23 A Not really.

24 Q Okay. So Jonathan Harvey asked if you were

**SAMUEL A. HERRICK - January 13, 2010**

55

1 asking for the data to leave Snap-On. You said no.  
2 What, if anything, was said next?

3 A Jonathan asked why we wanted it and I said  
4 because we paid for it, it's ours, and we have a need  
5 for it.

6 Q Were you any more specific than that?

7 A In the meeting we discussed at length  
8 that -- some of the different uses, such as having  
9 a -- having a part number verification in our  
10 I-warranty system, assisting in our cross reference  
11 information with Rapid Parts would be the two main  
12 topics.

13 Q Okay. What else was discussed about  
14 getting the data back, if anything?

15 A I recommended that they would follow up  
16 with us.

17 Q Okay. Was there anything more specific  
18 than that?

19 A Not that I recall.

20 Q Did they just -- I mean, I'm trying to get  
21 a feel for -- or understanding for what that means.  
22 Did they just say, we're committed to following up  
23 with you, and that was the end of the discussion  
24 or --

**SAMUEL A. HERRICK - January 13, 2010**

56

1           A       In the near future. They did not give us a  
2       hard date that I remember.

3           Q       Okay. All right. Well, what happened  
4       next? Actually, I'm sorry. Let me strike that. Let  
5       me back up. You listed a couple -- I think four  
6       different things that were discussed at a high level  
7       in that meeting. One was you had expressed your -- I  
8       can't even read my handwriting here -- the problems  
9       you had or disappointments with Snap-On, requested --  
10      discussed requesting the data back, and then the  
11      third was talked about a roadmap of products.

12                         Who -- who talked about a roadmap of  
13      the products? Is it Snap-On?

14           A       Yes.

15           Q       And a roadmap of the products, what are  
16      you -- what are you referring to?

17           A       Generally a timeline, at least a year, up  
18      to five, and a feature inclusion on that timeline.

19           Q       Is this -- are these roadmaps of the two  
20      products that MCFA was currently getting from  
21      Snap-On?

22           A       Yes.

23           Q       Was the Net Compass and -- what was the  
24      other one?

**SAMUEL A. HERRICK - January 13, 2010**

59

1           Q       Just so I'm clear, I mean, a week or two, a  
2       month, something like that?

3           A       Yes.

4           Q       And you said his goal was to meet your  
5       needs for the data and you started working with him  
6       on this demo because they wanted to meet those needs  
7       through some new means. What happened next?

8           A       Cory Roberts called Matt Wilczek and told  
9       him that -- that they would be able to deliver the  
10      data to us for a fee comparable to a new contract or  
11      he'd be able to include it in the contract of new  
12      business.

13          Q       And you weren't a part of that  
14      conversation, were you?

15          A       No.

16          Q       How do you know about it?

17          A       Matt Wilczek talked to me following the  
18      conversation.

19          Q       What, if anything else, did he tell you  
20      about that conversation?

21          A       That it was an unreasonable request.

22          Q       Did he discuss the details of the  
23      conversation with you other than what you've told me?

24          A       No.

**SAMUEL A. HERRICK - January 13, 2010**

60

1           Q       Why -- do you know why he thought it was an  
2 unreasonable request?

3           A       Yes.

4           Q       Why?

5           A       Because he told me.

6           Q       Okay. And I -- maybe I'm wrong. I thought  
7 my question was do you know why he thought it was an  
8 unreasonable request.

9           A       And I know what Matt told me.

10          Q       Which was what?

11          A       That we already paid for the data. We  
12 don't need to pay for it again.

13          Q       Did he say anything else?

14          A       Not that I recall.

15          Q       Do you recall if Snap-On provided MCFA with  
16 two options, like a less expensive option for data?

17                   MR. SPECTER: Objection. Calls for  
18 speculation. No foundation.

19                   THE WITNESS: Yes.

20          Q       (BY MR. GUAM) You do recall if there was  
21 another option?

22          A       I recall they gave us two options.

23          Q       What do you recall about the two options?

24          A       The unreasonable request clogs my memory

**SAMUEL A. HERRICK - January 13, 2010**

61

1 and I don't remember what the other solution was  
2 except that we were not interested in it.

3 Q All right. What, if anything, did you do  
4 after hearing of this telephone discussion to get the  
5 data back?

6 A Can you rephrase your question?

7 Q Well, I mean, did you do anything after  
8 this phone call to get the data back?

9 A Yes.

10 Q What did you do -- or what did you do next?

11 A I began talking with other suppliers.

12 Q Why?

13 A Because we needed to find a less expensive  
14 way to have an electronic copy of our data.

15 Q Well, what other suppliers did you speak  
16 with?

17 A Astoria. I don't recall any others. I  
18 don't recall the names of others.

19 Q Did you speak to O'Neil?

20 A Yes.

21 Q So just Astoria and O'Neil?

22 A There were others but no one of note.

23 Q Well, when did you first speak to O'Neil?

24 MR. SPECTER: With respect to this

**SAMUEL A. HERRICK - January 13, 2010**

62

1 matter?

2 MR. GUAM: Correct.

3 THE WITNESS: What is -- can you  
4 define "this matter"?

5 Q (BY MR. GUAM) The -- what we're talking  
6 about that involves getting MCFA data back.

7 A I believe it was still 2008.

8 Q Okay. Do you know when?

9 A Third or fourth quarter.

10 Q Why did you -- did -- were you personally  
11 the one that called O'Neil?

12 A Yes.

13 Q And why did you choose O'Neil?

14 A I didn't.

15 Q Who did? I mean, I'm trying to find out --  
16 I'm trying to ask you -- maybe this is just getting  
17 too difficult and maybe it's my fault -- why did you  
18 call O'Neil? Did you already know them? Did someone  
19 recommend them? Why did you call O'Neil?

20 A Jay Gusler suggested I call them.

21 Q Do you know why he would have suggested it?

22 A Yes.

23 Q Why?

24 A He knew they provided comparable products.

**SAMUEL A. HERRICK - January 13, 2010**

63

1 Q Had they been doing any work for MCFA at  
2 that time?

3 A Yes.

4 Q And what was that work?

5 A E-learning. They provided e-learning, an  
6 online tool for MCFA.

7 Q Okay. So you called O'Neil and who -- who  
8 did you speak with?

9 A Heather Cobb.

10 Q Did Mr. Gusler give you her name or did you  
11 just call up and ask for whoever could help you?

12 A Mr. Gusler gave me her name.

13 Q Okay. So what happened next once you  
14 called her?

15 A I requested a demo of their product line.

16 Q Which product line?

17 A The ones for their electronic data  
18 management services.

19 Q Did you discuss with her your -- MCFA's  
20 difficulties in getting its data back from Snap-On?

21 A Yes.

22 Q During that first phone call?

23 A No.

24 Q When did you first discuss that with



**SAMUEL A. HERRICK - January 13, 2010**

69

1           Q       I'm sure it's me and I'm confused, but  
2       didn't you say that MCFA also provided Snap-On with a  
3       text file of the text that's in the hard copy  
4       catalogs?

5           A       Yes.

6           Q       Why do you have to key that information if  
7       it's already in a text file?

8           A       It's different.

9           Q       How is it different?

10          A       The text file does not contain up --  
11       updates that were made in the paper manual.

12          Q       You say the text file would not contain  
13       updates that were made in the paper file?

14          A       Yes.

15          Q       What is the paper file?

16          A       The paper manual. Excuse me.

17          Q       Well, these updates to the paper manual,  
18       how are they published?

19          A       They are provided to us by Mitsubishi Heavy  
20       Industries in Japan from our engineering data.

21          Q       Okay. So these updates you have in hard  
22       copy form, correct?

23          A       Yes.

24          Q       Did you also have an accompanying text file

**SAMUEL A. HERRICK - January 13, 2010**

70

1 for those?

2 A Yes.

3 Q So for the updates you had the same as the  
4 original catalog, if I understand you? You had a  
5 hard copy and a text file?

6 A Yes.

7 THE VIDEOGRAPHER: You got one minute  
8 of tape left.

9 Q (BY MR. GUAM) And did MCFA provide Snap-On  
10 with those updates in both hard copy and text file  
11 format?

12 A No.

13 Q Okay. What -- what did you provide -- what  
14 did MCFA provide Snap-On?

15 A The updated parts manual and the original  
16 text file.

17 Q So they would get the update and hard copy  
18 but not the text file for that update?

19 A Correct.

20 Q Why don't we -- we'll go ahead and change  
21 it.

22 THE VIDEOGRAPHER: Going off the  
23 record, 12:04 p.m.

24 (Recess taken)

**SAMUEL A. HERRICK - January 13, 2010**

71

1 THE VIDEOGRAPHER: Going back on the  
2 record, 12:12 p.m., tape three.

3 Q (BY MR. GUAM) Mr. Herrick, is the -- the  
4 reason that MCFA wanted the data from Snap-On because  
5 these updates were keyed by Snap-On?

6 MR. SPECTER: Objection. Vague and  
7 ambiguous.

8 THE WITNESS: Yes, yes.

9 Q (BY MR. GUAM) But MCFA did have text files  
10 of those updates, correct?

11 A No.

12 Q Okay. I -- I thought you had said yes  
13 earlier, so maybe we better backtrack a little.

14 I thought you said that the updates --  
15 that you had the updates in both hard copy and  
16 corresponding text files but only provided Snap-on  
17 with the hard copies.

18 A The text file does not include the update.

19 Q Okay. So we're just miscommunicating.  
20 I -- to make sure I am clear, let me just back up.

21 The update is a hard copy, correct?

22 A Yes.

23 Q The update doesn't have its own  
24 corresponding text file?

**SAMUEL A. HERRICK - January 13, 2010**

72

1 A Yes.

2 Q I'm correct or it does?

3 A Yes, you're correct.

4 Q It -- it does not have a corresponding text  
5 file?

6 A Yes.

7 Q Okay. Maybe if you -- if -- if I could get  
8 you to say "correct" or "not correct" on this one,  
9 maybe that will help us get past this. I am  
10 correct -- no, that's not how I want to ask this.

11 MR. SPECTER: Just ask it directly.

12 Q (BY MR. GUAM) There's no text file for the  
13 updates; is that -- is that -- I can't --

14 A The text file we're given does not include  
15 the update.

16 Q So there's one text file for the original  
17 catalog and then you get hard copy updates?

18 A Yes, correct.

19 Q And what do you do when you get those hard  
20 copy updates, you give them to Snap-On?

21 A No.

22 Q Did you used to give them to Snap-On?

23 A No.

24 Q All right. Can you tell me how you kept --

**SAMUEL A. HERRICK - January 13, 2010**

73

1    how Snap-On kept this database updated for you? I  
2    mean, I'm missing something. I'm just -- going to  
3    just ask it casually. I mean, what did -- what did  
4    you do with these updates?

5           A       We manually correct poor English and  
6    specify the manuals to our market in the pdf only and  
7    create a final version from the version provided to  
8    us from Japan that we then publish to our market and  
9    provide to Snap-On.

10          Q       Well, let's go back through that, because I  
11    heard pdf in there, which is an electronic file,  
12    correct?

13          A       Yes, print document file.

14          Q       Now, you said you manually correct for poor  
15    English. When you -- that's the updates that you  
16    received from -- from who again?

17          A       Mitsubishi Heavy Industries, our parent  
18    company in Japan.

19          Q       Okay. And what do they send you, an  
20    electronic file or pieces of paper or both?

21          A       Both.

22          Q       So they send you -- so I'm -- so I'm clear,  
23    they send you a printed update and a corresponding  
24    electronic file for that?

**SAMUEL A. HERRICK - January 13, 2010**

97

1 Q How far behind schedule is it?

2 A At my last review, I believe we were about  
3 a month behind.

4 Q When was that last review?

5 A December.

6 Q Is the CMS in beta testing right now?

7 A No.

8 Q Is that because of the -- the delay in the  
9 data services?

10 A No.

11 Q Can you tell me why it's not in beta  
12 testing yet?

13 A O'Neil is not complete with the milestones.

14 Q Is the data services milestone still  
15 incomplete?

16 A Yes.

17 Q Let me hand you what I've marked as  
18 Exhibit 4. Do you recognize this document? You  
19 know, I'm sorry, I don't care about this document.

20 MR. SPECTER: Join. That means you  
21 can stop reading it.

22 THE WITNESS: Yeah, I'm trying to  
23 figure out why he doesn't care about it.

24 Q (BY MR. GUAM) Part of the mind game. I

**SAMUEL A. HERRICK - January 13, 2010**

99

1 What's -- what was the missing data? Was that data  
2 that MCF -- or that O'Neil couldn't obtain from the  
3 Snap-On servers?

4 A Yes.

5 Q And was that due to Snap-On blocking  
6 O'Neil's IP address?

7 MR. SPECTER: Objection. Calls for  
8 speculation. No foundation.

9 THE WITNESS: According to what I was  
10 told by O'Neil, that is correct.

11 Q (BY MR. GUAM) And what you say in your  
12 e-mail, you talk about all but 56 of the manuals.  
13 These 56 of the manuals, is that all of the -- the  
14 missing data that MCFA -- that MCFA needs to complete  
15 the data services?

16 A No.

17 Q Is that part of it?

18 A Yes.

19 Q What else does MCFA need?

20 A It needs the missing data for MCFE and  
21 MCFS.

22 Q Looking at the second page of this exhibit,  
23 Exhibit 10, it says, "CMS project update: July  
24 31st." It's kind of an interesting document with

**SAMUEL A. HERRICK - January 13, 2010**

124

1 May 15th, 2009, was Snap-On aware that MCFA was going  
2 to have O'Neil replace it?

3 A No.

4 Q Looking at the second page, right at the  
5 top, there's an e-mail that appears to be an e-mail  
6 from you to Barbara Moore dated May 15th. Do you see  
7 that, where it starts, "Do the passwords work  
8 manually for you?"

9 A Yes.

10 Q What were you referring to?

11 A The best I could recall it would be that  
12 this would be related to the second block of IP  
13 addresses with O'Neil.

14 Q Okay. Now, the sentence I asked about was  
15 do the passwords work manually for you, question  
16 mark. What passwords are you referring to?

17 A The passwords I gave them.

18 Q Well, what passwords did you give O'Neil?

19 A I gave them passwords to access the Europe  
20 and Singapore and American data on the Mitsubishi and  
21 Caterpillar portals.

22 Q Did you have passwords assigned to various  
23 O'Neil employees?

24 A No.



**SAMUEL A. HERRICK - January 13, 2010**

125

1           Q       Well, what passwords did you provide  
2 O'Neil?

3           A       Preexisting passwords.

4           Q       How many passwords did you provide O'Neil?

5           A       I'm not sure of the exact number. It was  
6 five to 15 for each website.

7           Q       How many websites are we talking about,  
8 three?

9           A       Six.

10          Q       Six. Were any of the passwords -- or I'm  
11 sorry. Strike that.

12                   Were the passwords per website unique  
13 to that website?

14          A       Yes.

15                   MR. PARKER: Objection.

16          Q       (BY MR. GUAM) Okay. And what I -- to  
17 clarify, if it's necessary, I just wanted to know if,  
18 you know, one password could be used on several  
19 different websites or if it's only good for one  
20 website.

21          A       Correct.

22          Q       So if -- I just want to be make sure I  
23 understand this. If it was a minimum of five  
24 passwords per website, we're talking at least 30

**SAMUEL A. HERRICK - January 13, 2010**

126

1 passwords, correct?

2 A Five times six is 30.

3 Q I think you -- you testified that these  
4 were preexisting passwords; is that correct?

5 A Yes.

6 Q What did you mean by preexisting passwords?

7 A I used passwords that were already existing  
8 on the portal.

9 Q Who did those passwords belong to?

10 MR. SPECTER: Objection. Vague and  
11 ambiguous.

12 Q (BY MR. GUAM) You can still answer.

13 MR. SPECTER: If you can as phrased.

14 THE WITNESS: In general, they -- they  
15 belonged to MCFA dealers.

16 Q (BY MR. GUAM) Maybe "belonged to" isn't  
17 the right word. Were pass -- how were passwords  
18 assigned to MCFA dealers?

19 A MCFA set them up.

20 Q And did a dealer have more than one  
21 password?

22 A No -- yes.

23 Q All right. I'm going to need you to  
24 clarify that a little bit.

**SAMUEL A. HERRICK - January 13, 2010**

131

1 Q Okay. What was provided to O' -- and I may  
2 have asked this but I've gotten lost already.

3 What was provided to O'Neil, just the  
4 global user ID, or user names and passwords?

5 A Both.

6 Q Okay.

7 A But I -- I'm going to -- this whole  
8 conversation we just had is specific to MCFA.

9 Q Yes. Is -- okay, yes. Is there a  
10 difference with MCFE and MCFS?

11 A Yes. So the answer for MCFA is global user  
12 names and passwords were provided to Snap -- to --

13 Q O'Neil?

14 A -- to O'Neil.

15 Q And again -- I'm sorry to ask again, just  
16 to make sure I'm clear, though, global user ID still  
17 ties back to a single person, correct?

18 A Yes.

19 Q Okay. And how does it work for MCFE and  
20 MCFS?

21 A MCFE uses a single account for all users in  
22 Europe. MCFS has user names and passwords that MCFA  
23 assigned to MCFS users.

24 Q So on the MCFS site, the user name and

**SAMUEL A. HERRICK - January 13, 2010**

132

1 password would relate to a specific individual?

2 A Yes.

3 Q Going back to the MCFE site, can you  
4 explain to me what you meant by a single account for  
5 all users in Europe?

6 A Yes.

7 Q Is that -- is that literally the way it  
8 sounds, everybody has one sign-on or -- or I'll let  
9 you explain it, but --

10 A Yes.

11 Q Well, go ahead and explain it in case I'm  
12 wrong, but -- or how does that work?

13 A MCFE dealers log onto an MCFE portal with a  
14 unique user name and password. If they want to go  
15 view the tool provided by Snap-On, the Web portal  
16 sends them to a -- to the site using a single user  
17 name and password behind the scenes for all users.

18 Q Huh. In order for O'Neil to scrape the  
19 MCFE website, what did MCFA provide it, you know, to  
20 gain access?

21 A Five to 15 passwords.

22 Q And would those have included user names  
23 with each password?

24 A Yes.

**SAMUEL A. HERRICK - January 13, 2010**

149

1 for the dealers are?

2 A I determined them by talking with our call  
3 center and asking them when they need to staff more  
4 people.

5 Q Do you know whether the scraping tool could  
6 run multiple threads?

7 A Yes.

8 Q And what's the purpose of running multiple  
9 threads?

10 A To gather data faster.

11 Q Who decided how many threads to run at once  
12 when using the scraping tool?

13 A I don't know.

14 Q Did you have any feedback or involvement in  
15 those decisions?

16 A Yes.

17 Q Okay. What was the -- well, explain to me  
18 how you were involved in those decisions.

19 A I, per O'Neil's request, gave them the  
20 ability to do between five and 15 multiple threads  
21 and let them determine how many to run at once.

22 Q Did they request that five to 15 number or  
23 did you decide that?

24 A They requested it.

**SAMUEL A. HERRICK - January 13, 2010**

150

1 Q And are you referring to just the number of  
2 passwords you gave them?

3 A That's correct.

4 Q Was O'Neil aware -- or strike that.

5 Did you inform O'Neil that the  
6 passwords you gave them belonged to MCFA dealers?

7 A No.

8 Q Was there -- well, was there any effort to  
9 make sure that the -- that the users assigned to  
10 those passwords could log on simultaneously with  
11 running the scraping tool?

12 A No effort was needed.

13 Q Why not?

14 A Snap-On allows simultaneous log-ons.

15 Q And how did you know that?

16 A That's how we were able to get the MCFE  
17 system to allow multiple log-ins through a single  
18 user account. So one of the features of what they  
19 provide us is to allow multiple log-ins to a single  
20 account.

21 Q I'm going to hand you what I've marked as  
22 Exhibit 43, again a string of e-mails with the -- the  
23 ones starting at the bottom of the first page appears  
24 to be from you to Heather Cobb and a number of other